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December 6, 1979

COURTS RETURN CHURCH PROPERTY TO DIOCESES

NEW YORK -- Members of two congregations who voted to secede from their dioceses in the Episcopal Church have been ordered by courts in late November to return the property to their respective dioceses.

In a decision monitored closely by other disaffected parishes, Roanoke Circuit Court Judge L. L. Koontz, Jr., ordered the 132-year-old Ascension Church on property in rural Amherst, Va., returned to the Diocese of Southwestern Virginia.

Judge John Brooks, Jr., Denver District Court, ruled Nov. 29 that the disputed property of St. Mary's Church in Denver belongs to those members of the parish who voted not to secede from the Diocese of Colorado in 1976.

Ascension's parishioners had voted 59-44 last May to split from the diocese in a dispute over the Church's General Convention decision in 1976 to permit the ordination of women to the priesthood, and other issues.

In the Denver decision, Judge Brooks ruled that the Episcopal Church is a hierarchical church and that St. Mary's Church is a subordinate part of that hierarchy.

His decision came three years and one day after the parish -- valued at \$450,000 in 1974 -- became the first in the U.S. to secede from the Episcopal Church following the 1976 Convention. Its then-rector, the Rev. James O. Mote, was later consecrated bishop in the newly-formed Anglican Catholic Church where he is now Bishop of the Diocese of the Holy Trinity.

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In adopting the "polity theory" put forth by the diocese's attorneys, Judge Brooks said that the Episcopal Church in the Diocese of Colorado, through its appropriate judicatory body, the Diocesan Executive Council, had decided that members of the current loyal vestry were the rightful successors to the pre-schism vestry of the original parish, and that the court accepted as "final and binding" the Council's resolution to that effect on Dec. 14, 1976.

"This court may do so without deciding any ecclesiastical questions," the judge said.

The Council's resolution stated that the diocese "does not approve or recognize the action taken by St. Mary's Church to withdraw from the Diocese of Colorado, supports those members of St. Mary's Church who voted against such withdrawal, and affirms its ecclesiastical ties and its rights with respect to the nonprofit corporation known as St. Mary's Church."

Judge Brooks noted that religious corporations are not the same as commercial corporations. "The courts may delve into the inner workings of ordinary corporations with impunity," he said. "Not so with religious corporations. Civil courts may not decide, for example, ecclesiastical considerations."

Plaintiffs in the case were Bishop William C. Frey and the Diocese of Colorado, plus the vestry of the loyal St. Mary's parish. Defendants were Bishop James O. Mote and the vestry of the secessionist body.

The defendants are expected to appeal the decision.

In the Amherst case, Strother Smith, the attorney for the Anglican majority, vowed to appeal the decision all the way to the Supreme Court if necessary. He acknowledged that the court's ruling could discourage future splits from the Episcopal Church. "Some who are not as fully convinced as others, will say, 'If we can't take our property with us, we'll just grin and bear it and stay.'"

The Diocese of Southwestern Virginia won a similar court victory earlier in 1979 over dissidents in Clifton Forge who tried to take the parish property out of the Episcopal Church.

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